IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 72 of 1993
With
WEALTH TAX REFERENCE No. 74 of 1993
With
WEALTH TAX REFERENCE No. 86 of 1993
With
WEALTH TAX REFERENCE No. 87 of 1993
With
WEALTH TAX REFERENCE No. 105 of 1993
With
WEALTH TAX REFERENCE No. 107 of 1993
With
WEALTH TAX REFERENCE No. 68 of 1993
With
WEALTH TAX REFERENCE No. 69 of 1993
With
WEALTH TAX REFERENCE No. 70 of 1993
With
WEALTH TAX REFERENCE No. 71 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)
Versus
K C PATEL TRUST & Others.- Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr. Manish R. Bhatt, learned counsel for the Revenue is present. None appears for respondent assessees despite service of notice.

2. The present Reference and the WTR No.74/93, WTR No.86/93, WTR No.87/93, WTR No. 105/93, WTR No. 107/93, WTR No. 68/93, WTR No. 62/93, WTR No.70/93, and WTR No.71/93 have been made by the Tribunal under Section 27(1) of the Wealth Tax Act, 1957 at the instance of the Revenue. In all the cases, the assessees are Trusts which are seeking exemption under Section 5(1)(xxiii) of the Wealth Tax Act, 1957, on the ground available to them under the law. The Assessing Officer did not accept the claim but on

appeal the claim was accepted and the legal position was accepted by the Income Tax Appellate Tribunal and it held that the Trust being a judicial entity would be entitled to exemption if other conditions under Section 5(1)(xxiii) are satisfied. The Revenue, being aggrieved by the said order of the Tribunal, made an application for Reference in almost every case. Accordingly, the References came to be made to this Court.

3. The question, that a Trust is entitled to exemption under Section 5(1)(xxiii) of the Act is now no more res integra in view of the judgment of this Court in the matter of ***Commissioner of Wealth Tax Vs. Parwatibai Trust,*** reported in ***(2004) 268 ITR Page 365.*** A Division Bench of this Court has observed that when the Trustees were subject to levy of wealth tax as if the trust property was held by trustees as individuals, the Revenue could not deny the

exemption under clause (xxiii) of Section 5(1) to the Trust or the trustees on the ground that they were not individuals.

4. Shri Bhatt, learned counsel for the Revenue, in view of this judgment, submits that nothing survives to decide in these References.

5. In view of the said statement made by the learned counsel for the Revenue and the above-referred judgment, we are of the opinion that the References do not survive for any adjudication.

6. Nothing survives but as the Tribunal has made the References, we hereby answer the question saying that a Trust would be entitled to apply for exemption under Section 5(1)(xxiii) of the Wealth Tax Act, 1957 and if other conditions are satisfied, then it would be entitled to exemption. Let the Tribunal be informed accordingly.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.